

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16173
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On October 5, 2001, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1995 in the total amount of \$5,300.

On December 7, 2001, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the taxpayer sold real property in Idaho in 1995. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 1995. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer letters asking the taxpayer about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond to the Bureau's letters. The Bureau determined the taxpayer was required to file an Idaho income tax return, so it prepared a return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that he believed there was no tax due on the sale of the property because he actually lost money on the transaction. He stated a return was filed but that the exact date and copies of the return were not available at that time.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer; he still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The facts show and the taxpayer does not dispute that there was a sale of property in Idaho. Therefore, if the taxpayer realized a gain on the sale, the gain is considered Idaho source income (Idaho Code section 63-3026A(3)(ii)). If the gain is in excess of the filing requirement provided for in Idaho Code section 63-3030, the taxpayer is required to file an Idaho income tax return.

The information available shows the taxpayer sold the Idaho property for \$53,000. Presumably, the taxpayer had basis in the property but that basis was not disclosed. The taxpayer stated he lost money on the sale of the property. However, he provided no information or documentation that would substantiate a loss or a gain on the sale. The only information the Tax Commission has regarding the sale is that the gross proceeds from the sale were \$53,000. The Bureau used this figure as the taxpayer's adjusted gross income for Idaho. Since the taxpayer has provided nothing to show this amount is incorrect, the Tax Commission upholds this figure as the taxpayer's adjusted gross income. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984).

On the return the Bureau prepared, the Bureau used the filing status of married filing joint but only gave the taxpayer one exemption. The record does not contain any information that

shows the taxpayer was married in 1995. Since there is an inconsistency on the return, the Tax Commission must make an adjustment to arrive at the proper amount of tax owed by the taxpayer.

The married filing joint filing status is an election made by married taxpayers (Idaho Code section 63-3031). In the case where married taxpayers have not filed Idaho income tax returns, the Tax Commission cannot make this election for the taxpayers unless the married taxpayers filed a married filing joint federal income tax return (Idaho Code section 63-3031(c)). The record contains no information on the taxpayer's federal filing status for 1995. Therefore, the Tax Commission must assume the taxpayer's filing status for 1995 was single. Changing the taxpayer's filing status to single corrects the inconsistency on the return the Bureau prepared.

The Bureau added interest and penalty to the taxpayer's return per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them proper and in accordance with the Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated October 5, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$3,579	\$ 895	\$ 1,854	\$6,328

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

[Redacted]
ADMINISTRATIVE ASSISTANT 1